

HOUSE BILL No. 1448

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10.3-3; IC 6-3-2-22; IC 6-8-13.

Synopsis: Indiana long term care savings plan. Establishes a long term care savings plan (plan) for a participant to fund an account to pay eligible long term care expenses of the participant. Authorizes the board of trustees of the public employees' retirement fund (PERF board) to administer the plan or enter into agreements with financial institutions to receive participant contributions in the form of account deposits. Limits plan contributions to \$165,000 during a participant's lifetime. Indexes the limitation for inflation. Provides a state income tax deduction of \$1,000 for an individual and \$2,000 for a joint return for contributions to the plan in a taxable year. Provides that qualified withdrawals from the plan to pay eligible long term care expenses are exempt from state income tax, and nonqualified withdrawals are subject to a 10% penalty and state income tax on the amount withdrawn. Establishes a long term care savings plan trust (trust) administered and managed by the PERF board to invest participants' contributions to the plan. Provides that the plan and the trust are not obligations of the state.

Effective: July 1, 2009.

Welch, Turner

January 13, 2009, read first time and referred to Committee on Ways and Means.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1448

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-10.3-3-7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. The board shall do
3 all of the following:

- 4 (1) Appoint a director, subject to the approval of the governor.
- 5 (2) Appoint an actuary and employ or contract with employees,
6 auditors, technical experts, legal counsel, and other service
7 providers as it considers necessary to transact the business of the
8 fund, without the approval of any state officer.
- 9 (3) Fix the compensation of persons:
 - 10 (A) appointed or employed by the board; or
 - 11 (B) who contract with the board.
- 12 (4) Establish a general office in Indianapolis for board meetings
13 and for administrative personnel.
- 14 (5) Provide for the installation in the general office of a complete
15 system of books, accounts including reserve accounts, and records
16 in order to give effect to all the requirements of this article and to
17 assure the proper operation of the fund.



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(6) Provide for a report at least annually, before June 1, to each member of the amount credited to him in the annuity savings account in each investment program under IC 5-10.2-2.

(7) With the advice of the actuary, adopt actuarial tables and compile data needed for actuarial studies which are necessary for the fund's operation.

(8) Act on applications for benefits and claims of error filed by members.

(9) Have the accounts of the fund audited annually by the state board of accounts.

(10) Publish for the members a synopsis of the fund's condition.

(11) Adopt a budget on a calendar year or fiscal year basis that is sufficient, as determined by the board, to perform the board's duties and, as appropriate and reasonable, draw upon fund assets to fund the budget.

(12) Expend money, including income from the fund's investments, for effectuating the fund's purposes.

(13) Establish personnel programs and policies for its employees.

(14) Submit a report of its activities each year to the governor, the pension management oversight commission, and the budget committee before November 1 of each year. The report under this subdivision must set forth a complete operating and financial statement covering its operations during the most recent fiscal year, including information on the following:

(A) Investment performance.

(B) Investment and administrative costs as a percentage of assets under management.

(C) Investment asset allocation strategy.

(D) Member services.

(E) Member communications.

(15) Establish a code of ethics or decide to be under the jurisdiction and rules adopted by the state ethics commission.

(16) Serve as the trustee for the Indiana long term care savings plan trust established by IC 6-8-13-15.

SECTION 2. IC 5-10.3-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) The board may do any of the following:

(1) Establish and amend rules and regulations:

(A) for the administration and regulation of the fund and the board's affairs; and

(B) to effectuate the powers and purposes of the board; without adopting a rule under IC 4-22-2.

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(2) Make contracts and sue and be sued as the board of trustees of the public employees' retirement fund of Indiana.

(3) Delegate duties to its employees.

(4) Enter into agreements with one (1) or more insurance companies to provide life, hospitalization, surgical, medical, dental, vision, long term care, or supplemental Medicare insurance, utilizing individual or group insurance policies for retired members of the fund, and, upon authorization of the respective member, deduct premium payments for such policies from the members' retirement benefits and remit the payments to the insurance companies.

(5) Enter into agreements with one (1) or more insurance companies to provide annuities for retired members of the fund, and, upon a member's authorization, transfer the amount credited to the member in the annuity savings account to the insurance companies.

(6) For the 1977 police officers' and firefighters' pension and disability fund, deduct from benefits paid and remit to the appropriate entities amounts authorized by IC 36-8-8-17.2.

(7) Whenever the fund's membership is sufficiently large for actuarial valuation, establish an employer's contribution rate for all employers, including employers with special benefit provisions for certain employees.

(8) Amortize prior service liability over a period of forty (40) years or less.

(9) Recover payments made under false or fraudulent representation.

(10) Administer the Indiana long term care savings plan established by IC 6-8-13-12.

~~(10)~~ **(11)** Exercise all powers necessary, convenient, or appropriate to carry out and effectuate its public and corporate purposes and to conduct its business.

(b) An agreement under subsection (a)(4) may be for a duration of three (3) years.

(c) This subsection does not apply to investments of the board. A contract under subsection (a)(2) may be for a term of not more than five (5) years, with an ability to renew thereafter.

(d) The board's powers and the fund's powers specified in this chapter shall be interpreted broadly to effectuate the purposes of this chapter and may not be construed as a limitation of powers.

SECTION 3. IC 6-3-2-22 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2009]: Sec. 22. (a) As used in this section, "account" means an account established for a participant in the Indiana long term care savings plan trust under IC 6-8-13-15(e).

(b) As used in this section, "eligible long term care expense" has the meaning set forth in IC 6-8-13-2.

(c) As used in this section, "nonqualified withdrawal" means a withdrawal or distribution from an account that is not a qualified withdrawal.

(d) As used in this section, "participant" has the meaning set forth in IC 6-8-13-6.

(e) As used in this section, "qualified withdrawal" means a withdrawal or distribution from an account that is made:

(1) to pay for eligible long term care expenses, excluding any withdrawals or distributions used to pay for eligible long term care expenses if the withdrawals or distributions are made from an account that is terminated less than twelve (12) months after the account is opened;

(2) as a result of the death or disability of the participant; or

(3) to transfer a participant's account to the participant's spouse.

(f) Each taxable year, a participant who makes a contribution to an account may deduct from the individual's adjusted gross income (as defined in IC 6-3-1-3.5(a)) the lesser of:

(1) the amount of the contribution made by the participant during the taxable year; or

(2) one thousand dollars (\$1,000).

(g) Notwithstanding subsection (f), a husband and wife filing a joint adjusted income tax return for a particular taxable year may not claim a deduction under this section of more than two thousand dollars (\$2,000).

(h) The following are exempt from the adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7:

(1) A qualified withdrawal from an account.

(2) Earnings from a participant's contributions that are credited to a participant.

(i) A nonqualified withdrawal from an account is subject to a ten percent (10%) penalty and payment of adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 on the amount of the withdrawal. A payment under this subsection shall be reported by the participant on the participant's annual state income tax return for any taxable year in which a nonqualified withdrawal is made.

(j) A nonresident participant who is not required to file an

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1 annual income tax return for a taxable year in which a
 2 nonqualified withdrawal is made shall make any required payment
 3 on the form required under IC 6-3-4-1(2). If the nonresident
 4 participant does not make the required payment, the department
 5 shall issue a demand notice in accordance with IC 6-8.1-8-2.

6 SECTION 4. IC 6-8-13 IS ADDED TO THE INDIANA CODE AS
 7 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 8 1, 2009]:

9 **Chapter 13. Indiana Long Term Care Savings Plan**

10 **Sec. 1.** As used in this chapter, "account" means a long term
 11 care savings account established under section 15(e) of this
 12 chapter.

13 **Sec. 2.** As used in this chapter, "eligible long term care expense"
 14 means:

15 (1) an expense paid by a participant for long term care
 16 provided to the participant; or

17 (2) a premium paid by a participant who is at least fifty (50)
 18 years of age for a qualified long term care policy for the
 19 participant.

20 **Sec. 3.** As used in this chapter, "financial institution" has the
 21 meaning set forth in IC 5-13-4-10.

22 **Sec. 4.** As used in this chapter, "Internal Revenue Code" has the
 23 meaning set forth in IC 6-3-1-11.

24 **Sec. 5.** As used in this chapter, "long term care" has the meaning
 25 set forth in IC 12-15-39.6-1.

26 **Sec. 6.** As used in this chapter, "participant" means an
 27 individual who is participating in the plan.

28 **Sec. 7.** As used in this chapter, "PERF board" refers to the
 29 board of trustees of the public employees' retirement fund
 30 established by IC 5-10.3-2-1.

31 **Sec. 8.** As used in this chapter, "plan" refers to the Indiana long
 32 term care savings plan established by section 12(a) of this chapter.

33 **Sec. 9.** As used in this chapter, "qualified long term care policy"
 34 has the meaning set forth IC 12-15-39.6-5.

35 **Sec. 10.** As used in this chapter, "taxable year" has the meaning
 36 set forth in IC 6-3-1-16.

37 **Sec. 11.** As used in this chapter, "trust" refers to the Indiana
 38 long term care savings plan trust established by section 15(a) of
 39 this chapter.

40 **Sec. 12. (a)** The Indiana long term care savings plan is created
 41 for the purpose of funding by a participant on a tax-favored basis
 42 an account to pay eligible long term care expenses of the

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1 participant.

2 (b) The PERF board may:

3 (1) administer the plan; or

4 (2) enter into agreements with one (1) or more financial
5 institutions to receive contributions in the form of account
6 deposits.

7 Sec. 13. (a) After December 31, 2009, an individual may
8 participate in the plan:

9 (1) by entering into a participation agreement with the PERF
10 board, if the PERF board administers the plan; or

11 (2) by making contributions to an account with a financial
12 institution with which the PERF board has an agreement
13 under section 12(b)(2) of this chapter.

14 (b) A participant may make contributions to the plan
15 established under section 12(a) of this chapter. However, a
16 participant may not contribute more than one hundred sixty-five
17 thousand dollars (\$165,000) to the plan during the participant's
18 lifetime. The dollar amount of the maximum lifetime contribution
19 must be adjusted annually for inflation in accordance with section
20 151 of the Internal Revenue Code.

21 (c) A participation agreement must provide the following:

22 (1) That the agreement may be:

23 (A) canceled by a participant; or

24 (B) transferred to a participant's spouse:

25 upon the terms and conditions set by the PERF board.

26 (2) That a participant is the owner of contributions made to
27 the plan, plus credited earnings on the contributions, unless
28 the participant transfers the agreement.

29 (3) That if:

30 (A) a participant cancels the agreement; or

31 (B) the plan established by section 12(a) of this chapter is
32 terminated;

33 a participant is entitled to receive the amount of the
34 participant's contributions to the plan plus credited earnings
35 on the participant's contributions. A participant may not
36 receive more than the fair market value of the participant's
37 account on the date the participant's account is liquidated.

38 Sec. 14. IC 6-3-2-22 governs state income tax treatment of
39 contributions to, investment earnings or interest on, withdrawals
40 from, and distributions from the plan established under this
41 chapter.

42 Sec. 15. (a) The Indiana long term care savings plan trust is

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established, separate and distinct from all other entities, and shall be maintained for the purposes of providing a source of money to pay:

- (1) a participant's eligible long term care expenses; and
- (2) the costs of administering the plan.

(b) The PERF board is the trustee of the trust and is responsible for the administration, operation, and maintenance of the trust.

(c) The trust consists of the following:

- (1) Each participant's contributions to the plan.
- (2) All earnings on investments or deposits of the plan.
- (3) All gifts, grants, devises, or bequests in money, property, or other form made to the plan.
- (4) All contributions or payments to the plan made in a manner provided by the general assembly.

(d) The administrative costs of the plan shall be paid from the earnings of the trust before the earnings are credited to participants' accounts.

(e) The PERF board shall establish an account for each participant. Each participant's account shall be credited with:

- (1) the contributions made to the plan by the participant; and
- (2) after the costs described in subsection (d), the earnings attributable to the balance of the account.

Sec. 16. (a) The PERF board has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of the trust established by section 15(a) of this chapter, including the PERF board's powers under IC 5-10.3-3-7 and IC 5-10.3-3-8.

(b) The PERF board has the fiduciary responsibility to make all decisions regarding the investment of the money in the trust, including the selection of all investment options and the approval of all fees and other costs charged to trust assets, including the costs of administration, operation, and maintenance of the trust, subject to the limitations and restrictions set forth in IC 5-10.3-5-3.

(c) The assets in the trust may be comingled or pooled with other public funds managed by the PERF board for investment purposes.

(d) In addition to the PERF board's powers under IC 5-10.3-3-7 and IC 5-10.3-3-8, the PERF board may do any of the following:

- (1) Select and enter into agreements with individuals and entities to provide investment advice and management of the assets held by the trust.
- (2) Establish investment guidelines, objectives, and performance standards for the assets held by the trust.

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1 (3) Approve a fee, commission, or expense that directly or
2 indirectly affects the return on investment of the assets of the
3 trust.

4 Sec. 17. The PERF board may adopt rules under IC 5-10.3-3-8
5 that it considers appropriate or necessary to implement this
6 chapter.

7 Sec. 18. This chapter may not be construed as an obligation of
8 the state to assume any responsibility for the Indiana long term
9 care savings plan or the Indiana long term care savings plan trust
10 established by this chapter.

11 SECTION 5. [EFFECTIVE JULY 1, 2009] IC 6-3-2-22, as added
12 by this act, applies to taxable years beginning after December 31,
13 2009.

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